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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/506,603	02/18/2000	Richard Harold Boivie	YO999-374	8006

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[REDACTED] EXAMINER

CARDONE, JASON D

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

2142

DATE MAILED: 07/29/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/506,603	BOIVIE ET AL.
	Examiner	Art Unit
	Jason D Cardone	2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 01 May 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-27 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-27 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: *See Attached Office Action*.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colby et al. (hereinafter Colby), U.S. Patent No. 6,006,264, in view of Vaid et al. (hereinafter Vaid), U.S. Patent No. 6,341,309.

3. Regarding claim 9, Colby discloses a communications system, comprising:  
a worldwide network for communicating with a plurality of customers [Colby, col. 2, lines 22-45 and col. 5, lines 43-51];

a manager, operatively coupled to the worldwide network, for controlling and guaranteeing a service level agreement (SLA) [ie. Quality of Service (QoS) with Content-Aware Flow Switch, Colby, col. 5, line 43 – col. 6, line 28]; and  
at least one server functioning as a server farm, operatively coupled to the manager, the plurality of customers having electronic business activity hosted by the at least one server as the server farm [Colby, col. 2, lines 22-45 and col. 5, lines 23-51].

Colby does not disclose that the QoS (SLA) is based on a communications outbound link bandwidth usage to the plurality of customers. However, Vaid, in the same field of endeavor, discloses a SLA is based on a communications outbound link bandwidth usage [ie. inbound usage, Vaid, col. 6, lines 25-41, col. 7, lines 22-32, and

col. 7, line 66 – col. 8, line 6]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the basing the service level upon the outbound link bandwidth usage, disclosed by Vaid, into the QoS management device, disclosed by Colby, in order to better manage the bandwidth usage [Vaid, col. 2, lines 38-44].

4. Regarding claim 10, Colby-Vaid further discloses the worldwide network comprises the Internet [Colby, col. 2, lines 22-45] [Vaid, col. 4, lines 10-24].
5. Regarding claim 11, Colby-Vaid further discloses the customers output requests on the Internet for web data located on a cluster of servers [Colby, col. 2, lines 22-45] [Vaid, col. 4, lines 10-24].
6. Regarding claim 12, Colby-Vaid further discloses the manager comprises a Communications Bandwidth Manager (CBM) presenting a single address to the at least one server cluster [Colby, col. 5, line 43 – col. 6, line 28] [ie. firewall, col. 4, lines 10-40].
7. Regarding claim 13, Colby-Vaid further discloses the manager includes a set of queues for queuing incoming requests [Colby, col. 2, lines 59 - col. 3, line 3] [Vaid, col. 8, lines 41-64].

8. Regarding claim 14, Colby-Vaid further discloses the manager selects a request from the queues, selects one of the at least one server to service the request, and sends the request to that server [Colby, col. 2, lines 59 - col. 3, line 3 and col. 14, lines 5-31] [Vaid, col. 8, lines 41-64].

9. Regarding claim 15, Colby-Vaid further discloses the selected server receives the request, services the request, and sends a response directly back to the customer along a data output path, wherein a portion of the path between the at least one server and the worldwide network is shared by a cluster of servers [Colby, col. 5, lines 23-51] [Vaid, col. 6, lines 12-41].

10. Regarding claim 16, Colby-Vaid further discloses the manager controls an allocation of the outgoing data path among multiple customer sites hosted on the server cluster, by controlling incoming requests at the manager [Colby, col. 15, line 31 – col. 16, line 65] [Vaid, col. 7, lines 22-32, and col. 7, line 66 – col. 8, line 6].

11. Regarding claim 17, Colby-Vaid further discloses an input link for receiving incoming requests from customers and a set of queues for queuing the incoming requests [Colby, col. 16, lines 20-65] [Vaid, col. 6, line 65 – col. 7, line 13].

12. Regarding claim 18, Colby-Vaid further discloses the incoming requests are queued in order of arrival time and are serviced first-in, first out (FIFO) within each

predetermined traffic class of requests [Colby, col. 14, lines 5-19] [Vaid, col. 6, line 65 – col. 7, line 13].

13. Regarding claim 19, Colby-Vaid further discloses the queues are provided for each traffic class for each customer [Colby, col. 2, line 59 - col. 3, line 3] [Vaid, col. 5, line 20 – col. 6, line 3].

14. Regarding claim 20, Colby-Vaid further discloses the incoming requests include acknowledgment packets contain information on the quantity of outbound data that is being acknowledged, so as to estimate a volume of data that was output on an outgoing path from the server [Colby, col. 5, line 43 – col. 6, line 28] [Vaid, col. 8, lines 31-41].

15. Regarding claim 21, Colby-Vaid further discloses the manager monitors an outgoing data path to determine a number of data units delivered to a customer [Colby, col. 5, line 43 – col. 6, line 28] [Vaid, col. 7, lines 22-32].

16. Regarding claim 22, Colby-Vaid further discloses the manager, based on monitoring of the outgoing data path, determines if an amount of bandwidth being used by a customer exceeds a bandwidth amount per a service level agreement, such that feedback is generated to reduce the number of inbound requests being accepted [Colby, col. 15, line 31 – col. 16, line 65] [Vaid, col. 6, lines 25-41, col. 7, lines 22-32, and col. 7, line 66 – col. 8, line 6].

17. Regarding claim 23, Colby-Vaid further discloses a traffic estimator for gathering monitored data on the usage of an output data path, the traffic estimator also gathering output load information from the acknowledgment packets that arrive at the set of queues [Colby, col. 14, lines 5-19] [Vaid, col. 8, lines 31-41].

18. Regarding claim 24, Colby-Vaid further discloses a scheduler for receiving compiled load information from the traffic estimator, wherein, based on the data from the traffic estimator, and service level agreement (SLA) information provided by an operator, the scheduler selects from requests in the queues, and for a selected request determines a server node to service the request, and sends the selected request to the server node [Colby, col. 15, line 31 – col. 16, line 65] [Vaid, col. 6, line 65 – col. 7, line 13].

19. Regarding claim 25, Colby-Vaid further discloses the scheduler determines if requests or associated packets in the queues are to be discarded, or whether a direct response indicating an overloaded condition is to be sent to a customer [Colby, col. 14, lines 32-40] [Vaid, col. 8, lines 22-30].

20. Regarding claims 1-8, 26, and 27, claim 1-8, 26, and 27 have similar limitations as claims 9-25. Therefore, the similar limitations are disclosed under Colby-Vaid for the same reasons set forth in the rejection of claims 9-25 [Supra 9-25].

***Conclusion***

21. A shortened statutory period for reply to this Office action is set to expire THREE MONTHS from the mailing date of this action.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D Cardone whose telephone number is (703) 305-8484. The examiner can normally be reached on Mon.-Thu. (9AM-6PM).

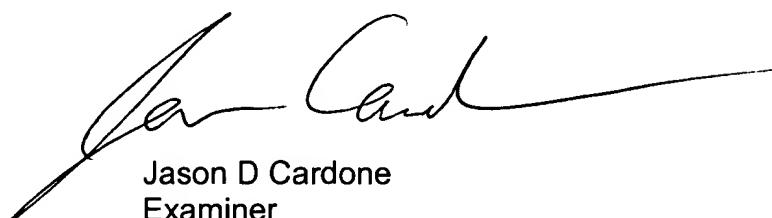
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Powell can be reached on (703) 305-9703. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

(703) 746-7238 (After Final Communications)

(703) 746-7239 (Official Communications)

(703) 746-7240 (For Status inquiries, Draft Communications).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



Jason D Cardone  
Examiner  
Art Unit 2142

July 25, 2003